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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 157 of 2005
Date of decision: 8.10.2007

Kanshi Ram ...Petitioner

Versus

Sain Ditta and others ...Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Sudhir Mittal, Advocate for the petitioner.

Mr. Sandeep K. Sharma, Advocate for respondent No. 1.

RAJESH BINDAL, J.

The challenge in the present petition is to the order passed by the trial Court whereby application filed by respondent no.1 for framing of additional issues has been accepted.

2. The dispute arises out of a suit filed by respondents No. 2 and 3 against the petitioner and other defendants on February 7, 1992 for mandatory injunction in which after filing of the written statement by the petitioner and other defendants, respondent no.1 got himself impleaded as one of the defendants and filed written statement alongwith his counter claim. Issues arising out of the pleadings of the parties were framed on June 12, 1993. No issue was claimed by the respondent no.1/defendant no.10. Thereafter, matter remained pending for recording evidence, which was completed on November 22, 2000. Respondent no.1/defendant no.10 was proceeded exparte. It was only on September 17, 2003, he was permitted to rejoin the proceedings and thereafter quite belatedly on October 2, 2003, application for framing of additional issues was filed by respondent no.1/ defendant no.10, which was accepted by the trial Court by passing the impugned order on December 11, 2004 by framing the following two additional issues :-

> "4-A Whether defendant No. 10 Sain Ditta Mal is entitled to a decree for permanent injunction against plantiffs and

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defendants No.1 to 8 against his dispossession from property mentioned in the counter-claim and as well as against raising of any construction over it? OPD-10

4-B Whether defendant no.10 is also entitled to a decree for mandatory injunction with a direction to defendants No.1 to 8 to remove their construction illegally raised by them over the property mentioned in counter-claim and a further direction for restoration of said property in its original position? OPD-10."

3. Learned counsel for the petitioner has made two fold submissions. Firstly, that after filing of the written statement and counter claim by respondent no.1/defendant No.10 in May, 1992 issues were framed by the trial Court on June 12, 1993. Thereafter his silence for more than 10 years and four months would necessarily mean that he was satisfied with the issues framed and in any case would amount to waiver of his right to claim any other issue at this late stage. Infact the entire effort is to delay trial of the suit and to continue mental agony and harassment of the petitioner as the plaintiff No. 2 in the suit and respondent no.1/defendant no.10 are real brothers. He relied upon judgment of this court in **Piara Singh and others Vs. Bhupinder Kumar and another 2000 (2) Punjab Law Reporter 688**. Secondly, the contention is that even otherwise the issues, which are sought to be raised are squarely covered against the respondent no.1/defendant no.10 vide judgment between the parties in the earlier litigation, which had attained finality. Once that is so, it is patently clear that entire effort is to delay the proceedings.

4. On the other hand, learned counsel for respondent No.1/defendant no.10 that mere delay in moving the application for framing of additional issues is not fatal as the real controversy between the parties need to be decided in the lis pending before the Court. As regards the earlier judgment taking view against the respondent no.1/defendant no.10, he submitted that on that account, petitioner shall be at liberty to raise the plea of resjudicata and even for this, it will have to be decided as to whether the earlier judgment squarely covers additional issues framed by the trial

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Court, and only then the principle of resjudicata would be applicable.

5. Having heard learned counsel for the parties, I find merit in the contentions raised by learned counsel for the petitioner. Admittedly, the issues were framed by learned trial Court vide order dated June 12, 1993 after considering the pleadings of the parties including the written statement filed by respondent no. 1/defendant no. 10. No objection thereto was raised at the relevant time. Application for framing of additional issues was filed as far as on October 2, 2003 i.e. more than 10 years after the framing of issues. Once in a case, the parties are on trial, after completion of pleadings and understanding the case put up by each of them, in my opinion, the right to challenge the framing or non-framing of issues arising out of the pleadings of the parties is waived of. No party to a suit can be permitted to sleep over the matter for more than a decade and then move application for framing of additional issues. Merely because respondent no. 1/defendant no. 10, who initially had been proceeded exparte after filing of the written statement, had been allowed to rejoin the proceedings would not mean that for his purpose now fresh issues are required to be framed and trial to recommence. Accordingly, the impugned order dated December 11, 2004 passed by Court below framing additional issues is set aside.

6. The parties through their counsel are direction to appear before the trial Court for further proceedings on November 05, 2007. The trial of the suit be expedited.

7. The revision petition is disposed of in the manner indicated above.

October 08, 2007 **(Rajesh Bindal)**
Pka **Judge**